

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>KOHL'S DEPARTMENT STORES INC,</p> <p>v.</p> <p>Respondent:</p> <p>MESA COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 65845</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on February 29, 2016, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented by Andrea Nina Atencio, Esq. Petitioner is protesting the 2015 actual value of the subject property.

Subject property is described as follows:

**636 Market Street, Grand Junction, Colorado
Mesa County Schedule No. R054750**

The subject is an 87,564-square foot retail building that was completed in 2006. The building includes a small office area at the rear of the store. There is an additional 7,300-square foot storage mezzanine at the rear of the store. It is situated on a 309,712-square foot site, a portion of which is located in floodplain. The subject is located across the street from the Mesa Mall. Petitioner described the building as a "big box" store. Respondent described the building as an 87,080-square foot "mall anchored department store".

Petitioner presented the following indicators of value:

Market:	\$4,728,500
Cost:	\$5,996,400
Income:	\$5,145,400

Petitioner is requesting an actual value of \$5,150,000 for the subject property for tax year 2015. Respondent assigned a value of \$7,188,630 for the subject property for tax year 2015.

Petitioner's witness, Steve Letman, a Certified General Appraiser with Consultus Asset Valuation, presented four comparable sales and one listing ranging in sale price from \$1,809,800 to \$2,715,000 and in size from 38,000 to 55,350 square feet indicating a range of \$39.12 to \$58.54 per square foot. The sales were from a broad geographical area that included the front range of Colorado, with one sale from Grand Junction. After adjustments were made, the sales ranged from \$41.08 to \$61.46 per square foot with a mean of \$54.21 and a median of \$49.66 per square foot. Mr. Letman concluded to a value of \$54.00 per square foot using the market approach or \$4,728,500, rounded.

Petitioner presented a cost approach to derive a value for the subject property of \$5,996,400. Mr. Letman relied on the same four land sales as used by Respondent, concluding to a land value of \$1,500,000. Actual costs for the subject along with other Colorado Kohl's stores were considered and compared to costs indicated by Marshall-Swift data. A deduction of 25% was made for the combination of physical and functional obsolescence. An additional 10% was deducted for external obsolescence. Replacement cost was estimated at \$6,917,600, then depreciation of \$2,421,200 was deducted to indicate depreciated building cost of \$4,496,400. The addition of \$1,500,000 for land value indicated a total value of \$5,996,400 using the cost approach.

Petitioner presented an income approach to derive a value of \$5,145,400 for the subject property. A net rental rate of \$5.50 per square foot was derived from an analysis of leases and listings of retail properties located throughout the State of Colorado. Three of the lease transactions were from the Grand Junction area, and were given the greatest weight in the analysis. A vacancy rate of 10% was deduction as well as landlord expenses of 8%. A capitalization rate of 7.75% was applied based on market surveys.

The three approaches indicated a range in value between \$4,728,500 and \$5,996,400 equal to \$54.00 to \$70.76 on a per square foot basis. Mr. Letman concluded to a value of \$5,150,000 for the subject (\$58.81 per square foot), with the income approach given the greatest weight. As further support for the requested value, Petitioner pointed to the assigned value of the nearby Cabela's of \$53.71 per square foot despite a sale of the property during the base period for \$72.08 per square foot.

Respondent presented the following indicators of value:

Market:	\$7,900,000
Cost:	\$10,280,000
Income:	\$7,200,000

Respondent's witness, Steve W. Henderson, Certified Residential Appraiser with the Mesa County Assessor's Office, presented a market approach consisting of three comparable sales ranging in sale price from \$5,430,000 to \$11,350,000 and in size from 35,345 to 75,420 square feet, resulting in a price range of \$72.00 to \$321.12 per square foot. After adjustments were made, the sales ranged

from \$83.11 to \$296.72 per square foot. Mr. Henderson assigned a value of \$90.22 per square foot or \$7,900,000 within the sales comparison approach.

Respondent used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$10,280,000. Land value of \$1,890,000 (\$6.10 per square foot) was derived from an analysis of five land sales. Marshall Valuation Services (MVS) cost estimate for the subject was used to determine replacement cost new of the improvements at \$97.65 per square foot or \$7,780,663. Mr. Henderson analyzed the subject as a Mall Anchor (Department/Big Box) Store. Depreciation of 2% was deducted based on an effective age of 4 years and an economic life of 50 years. With the addition of site improvements, shipping and receiving docks, and mezzanine area, total replacement cost new less depreciation was \$8,385,420. With the addition of land value, the indicated value using the cost approach was \$10,280,000, rounded.

Respondent used the income approach to derive a value of \$7,200,000 for the subject property. Mr. Henderson calculated \$696,640 projected gross income for the subject based on an \$8.00 per square foot rental rate and overall size of 87,080 square feet. Vacancy of 5% was deducted for effective gross income of \$661,808. Subsequently, owner's expenses of 8.5% and reserves for replacement of 10% were deducted to arrive at net operating income of \$539,374. A 7.5% capitalization rate was applied to indicate a value of \$7,200,000 (rounded) within the income approach.

Respondent contends that Petitioner neglected to consider sale and lease data for the local Grand Junction market area and instead relied on information from a broader statewide search. Respondent's three approaches indicated a range in value of \$7,200,000 to \$10,280,000 or \$82.68 to \$118.05 per square foot. Mr. Henderson considered the income approach as the best indicator of the value of the subject and concluded to a value of \$7,400,000. Respondent assigned an actual value of \$7,188,630 to the subject property for tax year 2015.

Respondent incorrectly valued the subject as a mall anchored department store. Although the subject is located in the general area of the mall, it is not attached to the mall, accessible directly from the mall, or part of the mall branding. The Board was convinced by the limited data provided that Respondent primarily relied on sales and leases from multi-tenant properties that provide limited support in the valuation of a free-standing, owner-occupied, big box retail store. While the Board understands the confidential nature of the information collected by the assessor's offices statewide, Respondent's analysis must still support the value placed on the subject. Finally, the Board found Mr. Henderson's adjustments and analysis to be unusual to what is typically found in the appraisal industry. (For example, using overage rent or participation rent as a means of determining an adjustment for building size.)

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2015 valuation of the subject property was incorrect. Although Petitioner relied on sales and leases found in a statewide search, the Board was convinced that the data and analysis more accurately represented the value of a free-standing, owner-occupied, big box retail store. The Board concluded to a value of \$5,150,000 for the subject (\$58.81 per square foot), with the income approach given the greatest weight.

Petitioner argued that the subject was not valued equally to the nearby Cabela's property, which received a 2015 value of \$53.71 per square foot despite a sale of the property during the base period for \$72.08 per square foot. While equalization is the goal of uniform means and methods of assessment, perfect uniformity is not required under statute or the constitution. *See Crocog Company v. Arapahoe County Bd. of Equaliz.*, 813 P.2d 768 (Colo. App. 1990); *Bishop v. Colo. Bd. of Assess. Appeals*, 899 P.2d 251 (Colo. App. 1994). The Board can only consider an equalization argument as support for the value determined using the market approach. *Arapahoe County Bd. of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). Further, for an equalization argument to be effective, Petitioner must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach. As that evidence and testimony was not presented, the Board gave limited consideration to the equalization argument presented by Petitioner.

The Board concludes that the 2015 actual value of the subject property should be reduced to \$5,150,000.

ORDER:

Respondent is ordered to reduce the 2015 actual value of the subject property to \$5,150,000.

The Mesa County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered)

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

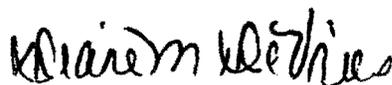
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 18th day of March, 2016.

BOARD OF ASSESSMENT APPEALS

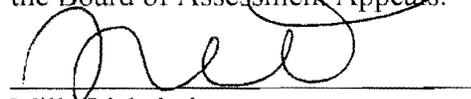


Diane M. DeVries



Sondra Mercier

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Milla Lishchuk

